93-104

No. _____

Supreme Court, U.S.
FILED
JUL 15 1993
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

FRANK J. FESTA, JR.,

Petitioner,

v.

LOCAL 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, MULVIHILL ELECTRICAL CONTRACTING CORP.,

Respondent.

PETITION FOR WRITE OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Frank J. Festa, Jr., pro se
Post Office Box 97
Scotch Plains, New Jersey 07076-0097
908-889-4076
Petitioner

QUESTION PRESENTED

(1) May the United States District Court after a timely demand not conduct a jury trial.

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TABLE OF AUTHORITIES CITED

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IN THE SUPREME COURT OF THE

UNITED STATES OF AMERICA

OCTOBER TERM, 1993

Frank J. Festa, Jr.,

Petitioner,

v.

Local 3, I B E W, et al,

Respondent.

PETITION FOR WRITE OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Petitioner, Frank J. Festa, Jr., respectfully prays that a writ of certiorari issue to review the Order and opinion of the United States Court of Appeals for the Second Circuit affirming the judgment of the district court.

OPINIONS BELOW

The Order of the Court of Appeals appears in Appendix A to this Petition. The Judgement of the District Court in Appendix B to this Petition.

JURISDICTION

The Court of Appeal's Order in this matter was filed on April 2, 1993. A timely Petition for Rehearing was filed on April 9, 1993. The Court of Appeal's denial of the Petition for Rehearing was issued on May 21, 1993. This Court's jurisdiction is invoked under Title 28, U.S.C. Sec. 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U. S. Constitution Amendment VII

The lower court applied the wrong standard to the issue. The following cases expressly held or recognized that a jury trial is fundamental to justice.

C.A. 11(Ga.) 1990 Trial by jury is fundamental to american scheme of justice and is an essenial element of due process. U.S.C.A. Const. Amends. 5, 14 U.S. Special School Dist. v Jones, Ark. 250 F. 440 162 C.C.A. 510.

C.A. Tex 1949 The denial of right of jury trial after demand in federal court is an unconstitutional abuse of power. U.S.C.A. Const. Amend. 7. Bass v Hoagland, 172 F.2d 205, Cert. den. 70 S. Ct. 57, 338 U.S. 816, 94 L.Ed. 494.

The federal Rules of Civil procedure also declare that the right of trial by jury as declared by the seventh amendment to the constitution, or as given by a statute of the United States, must be preserved to the parties inviolate. Rule 38(a), Fed. R. Civ. Proc. This provision clearly reflects the thoroughly established policy of our law. Barder v Turberville, 94 App DC 335, 218 F.2d. 34.

The right to have a trial by jury is a fundamental right in our democratic system. People v Dunn, 157 NY 528, 52 NE 572.

STATEMENT OF THE CASE

Plaintiff made a timely jury demand 8/20/90.

REASON FOR GRANTING THE WRIT

Certiorari should be granted for the following reasons: This petition presents issues resolved by this Court; and the Opinion below conflicts, with previous decisions of this Court, with its own decisions, and with decisions of other Circuits.

CONCLUSION

That a court denial of right of jury trial is an unconstitutional abuse of power.

For the foregoing reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals in this matter.

If this Court should elect not to address the issues presented in this writ at the present time, it is requested that the writ issue and that the matter be remanded to the Court of Appeals for redetermination in light of this Court's opinion in Local 391 -v- Terry 494 US, 108 L Ed 2d 519, 110 S. Ct. No. 88-1719 Dec. 6 1989.

Respectfully submitted,

Dated: July 5, 1993

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c: Norman Rothfeld, Esq.
Felix T. Gilroy, Esq.

Filed April 2, 1993
Not for Publication

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

NO. 92-7829

FRANK J. FESTA, JR.

APPELLANT,

vs

LOCAL 3 et al,

APPELLEES.

Appeal from the United States District Court for the Eastern District of New York D. C. 89-CV-3212 Submitted April 2, 1993 Before: Oakes, Newman and Cardamone, Circuit Judges.

ORDER

On consideration judgement of dismissal was affirmed and Festa's motion of 8/2/92 was denied.

SUMMARY ORDER NOT FOR PUBLICATION

Appendix A

Filed July 16, 1992
Not for Publication

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

FRANK J. FESTA, JR. 89-CV-3212

Planitiff JUDGEMENT

vs

Local 3 et al.,

Defendant

A memorandum and order of Honorable Eugene H. Nickerson, United States District Judge, having been filed on July 15, 1992 dismissing the complaint with prejudice, it is

ORDERED and ADJUDGED that plaintiff take nothing of defendants; and, that the complaint is dismissed with prejudice.

Dated: Brooklyn, New York
July 16, 1992

Robert C. Heinemann
Clerk of Court

Appendx B